



Docket No.: TEI-0122
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ieyasu Kobayashi et al.

Application No.: 09/914,033

Confirmation No.: 8235

Filed: August 22, 2001

Art Unit: 3654

For: POLYESTER FILM ROLL

Examiner: W. A. Rivera

APPELLANT'S BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

This is an Appeal Brief under 37 C.F.R. §41.37 appealing the decision of the Examiner dated September 2, 2009. Each of the topics required by 37 C.F.R. §41.37 is presented herewith and is labeled appropriately.

This brief is in furtherance of the Office Action of September 2, 2009.

A Notice of Appeal and Appeal Brief Transmittal are being filed herewith.

Accordingly, the filing of this Appellant's Brief is timely. 37 C.F.R. §1.136.

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Teijin Limited of Osaka, Japan. An assignment of all rights in the present application to Teijin Limited was executed by the inventors and recorded by the U.S. Patent and Trademark Office at **Reel 012236, Frame 0719**.

II. RELATED APPEALS AND INTERFERENCES

A Decision of the Board of Patent Appeals and Interferences was mailed on April 30, 2009. The Decision of April 30, 2009 reversed the final rejection of the examiner as to all of the pending claims within the instant application.

A Petition Under 37 C.F.R. §1.181 has been filed in the instant application along with this Appeal Brief.

A Decision of the Board of Patent Appeals and Interferences was mailed on May 7, 2009 in U.S. Patent Application No. 10/832,279. U.S. Patent Application No. 10/832,279 is a continuation of the instant application. The Decision of May 7, 2009 reversed the final rejection of the examiner as to all of the pending claims within the continuation application.

There are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Within the Office Action of September 2, 2009:

Page 2 of the Office Action indicates a rejection of claim 6 under 35 U.S.C. §112, second paragraph.

Page 2 of the Office Action indicates a rejection of claims 6 and 9 under 35 U.S.C. §103 as allegedly being unpatentable over U.S. Patent No. 4,576,344 (Sasaki).

Page 3 of the Office Action indicates a rejection of claims 13-15 and 23 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,576,344 (Sasaki) in view of U.S. Patent No. 4,911,951 (Ogawa).

Thus, the status of the claims is as follows:

Canceled; Claims 1-5

Rejected; Claim 6

Canceled; Claims 7-8

Rejected; Claim 9

Canceled; Claims 10-12

Rejected; Claims 13-15

Canceled; Claims 16-22

Rejected; Claim 23

Canceled; Claim 24

No claims are indicated within the Final Office Action to contain allowable subject matter.

Accordingly, Appellant hereby appeals the final rejection of claims 6, 9, 13-15, and 23 which is presented in the Claims Appendix.

IV. STATUS OF AMENDMENTS

Provided is a statement of the status of any amendment filed subsequent to final rejection.

An Amendment in Response to Non-Final Office Action has been filed prior to the filing of this appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following description is provided for illustrative purposes and is not intended to limit the scope of the invention. Reference is made to the specification as originally filed.

<p>6. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,</p> <p>wherein W is the width of the film roll, and L is the length of the rolled film,</p> <p>wherein the difference Rc between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.</p>	<p>Specification paragraph beginning on page 2, line 12.</p> <p>Specification paragraph beginning on page 3, line 33.</p> <p>Specification paragraph beginning on page 5, line 30.</p>
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<p>9. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,</p> <p>wherein W is the width of the film roll, and L is the length of the rolled film,</p> <p>wherein the flexural modulus of the core in the circumferential direction is not less than 13 Gpa.</p>	<p>Specification paragraph beginning on page 2, line 12.</p> <p>Specification paragraph beginning on page 3, line 33.</p> <p>Specification paragraph beginning on page 6, line 19.</p>
<p>13. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,</p> <p>wherein W is the width of the film roll, and L is the length of the rolled film,</p> <p>wherein the polyester film is a film used for the support of a magnetic recording medium,</p> <p>wherein the magnetic recording medium is a digital recording method magnetic recording medium.</p>	<p>Specification paragraph beginning on page 2, line 12.</p> <p>Specification paragraph beginning on page 3, line 33.</p> <p>Specification paragraph beginning on page 7, line 14.</p>

<p>14. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,</p> <p>wherein W is the width of the film roll, and L is the length of the rolled film,</p> <p>wherein the polyester film is a film used for the support of a magnetic recording medium,</p> <p>wherein the magnetic recording medium is a magnetic recording medium whose magnetic layer is a ferromagnetic metal thin film layer.</p>	<p>Specification paragraph beginning on page 2, line 12.</p> <p>Specification paragraph beginning on page 3, line 33.</p> <p>Specification paragraph beginning on page 7, line 14.</p>
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<p>15. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,</p> <p>wherein W is the width of the film roll, and L is the length of the rolled film,</p> <p>wherein the polyester film is a film used for the support of a magnetic recording medium,</p> <p>wherein the polyester film has a coating layer on the side on which the magnetic surface is disposed and the surface with the coating layer is rolled in the inner side.</p>	<p>Specification paragraph beginning on page 2, line 12.</p> <p>Specification paragraph beginning on page 3, line 33.</p>
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23. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a plurality of diameters obtained from measurements along the width direction of the roll, said plurality of diameters being represented by a curved line having two ends, said plurality of diameters comprising a maximum diameter and a minimum diameter, said maximum diameter being represented by a first maximum perpendicular line length which is determined by a straight line drawn connecting both ends of the curved line, and a first perpendicular line with respect to said straight line drawn from the maximum convex area of said curved line to said straight line, said minimum diameter being represented by a second maximum perpendicular line length which is determined by a second perpendicular line with respect to said straight line drawn from the maximum concave area of said curved line to said straight line,

wherein the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm ,

wherein the polyester film roll is supplied for a magnetic recording medium,

wherein the polyester film roll is supplied for a magnetic recording medium whose magnetic layer is a coating type.

Specification paragraph beginning on page 8, line 9.

Specification paragraph beginning on page 6, line 19.

Specification paragraph beginning on page 7, line 14.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for consideration in this appeal are as follows:

Whether the Examiner erred in rejecting claim 6 under 35 U.S.C. §112, second paragraph.

Whether the Examiner erred in rejecting claims 6 and 9 under 35 U.S.C. §103 as allegedly being unpatentable over U.S. Patent No. 4,576,344 (Sasaki).

Whether the Examiner erred in rejecting claims 13-15 and 23 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,576,344 (Sasaki) in view of U.S. Patent No. 4,911,951 (Ogawa).

These issues will be discussed hereinbelow.

VII. ARGUMENT

In the Office Action of September 2, 2009:

The Examiner erred in rejecting claim 6 under 35 U.S.C. §112, second paragraph.

The Examiner erred in rejecting claims 6 and 9 under 35 U.S.C. §103 as allegedly being unpatentable over U.S. Patent No. 4,576,344 (Sasaki).

The Examiner erred in rejecting claims 13-15 and 23 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,576,344 (Sasaki) in view of U.S. Patent No. 4,911,951 (Ogawa).

For at least the following reasons, Appellant submits that this rejection is both technically and legally unsound and should therefore be reversed.

For purposes of this appeal brief only, and without conceding the teachings of any prior art reference, the claims have been grouped as indicated below.

1. The Examiner erred in rejecting claim 6 under 35 U.S.C. §112, second paragraph.

Page 2 of the Office Action asserts that:

Claim 6 is vague and indefinite. On line 7, the term "Rc" is unclear. What does "Rc" stand for?

In response, an applicant for patent is entitled to select the claim language as long as the meaning is reasonably plain and specific. *Ellipse Corporation v. Ford Motor Company*, 312 F.Supp. 646, 660, 164 USPQ 161, 171 (N.D. Ill. 1969).

The plain meaning of claims language is entitled to a strong presumption that it correctly expresses the scope of the claim. *In re Certain Thermometer Sheath Packages*, 205 USPQ 932, 941 (ITC 1979).

In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to *particularly point out and distinctly claim the subject matter which the patentee regards as his invention*. *Texas Digital Systems Inc. v. Telegenix Inc.*, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

Included within claim 6 is that *the difference Rc between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.*

In most cases, the best source for discerning the proper context of claim terms is the patent specification wherein the patent applicant describes the invention. *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 71 USPQ2d 1081, 1085 (Fed. Cir. 2004).

The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. *Markman v. Westview Instruments, Inc.*, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995) (in banc).

Here, the specification as originally filed in the paragraph beginning at page 5, line 30, provides as follows:

The outer diameter of the roll-shaped core of the polyester film roll in the present invention is especially not limited, but is usually 0.100 to 0.400 m. When the outer diameters of the roll shape of the core are measured in the width direction of the core, the difference (Rc) between the maximum value and the minimum value is preferably not more than 300×10^{-6} m, further preferably 200×10^{-6} m. When the difference (Rc) exceeds 300×10^{-6} m, the core is not preferable, because wrinkles and slacks are generated in the film roll by the effect of the core, even when the thickness unevenness of the polyester film is small. The roll shape of the core is desirably a crown shape in which the central portion of the core in the width direction and both the end portions of the core are thick and thin, respectively. The crown shape facilitates the outward removal of air between the films and the inhibition of wrinkle generation, when the polyester film is rolled. In the core of the crown shape, the difference between the diameter of the central portion and the diameters of both the end portions is preferably in the range of 0 m to 300×10^{-6} m.

As such, those skilled in the art would understand and appreciate the meaning of the term “Rc” as found within claim 6.

2. The Examiner erred in rejecting claims 6 and 9 under 35 U.S.C. §103 as allegedly being unpatentable over U.S. Patent No. 4,576,344 (Sasaki).

a. Claim 6 stands or falls alone

Claim 6 - Claim 6 is drawn to a polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the difference Rc between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.

Sasaki - Within the Decision on Appeal of April 30, 2009, the Board of Patent Appeals and Interferences ("the Board") has **reversed** the rejection of claim 6 under 35 U.S.C. §103 as allegedly being unpatentable over Sasaki.

In this regard, the use of Sasaki as the lone reference in rejection under 35 U.S.C. §103 of claim 6 was already adjudicated and reversed by the Board (Decision on Appeal at page 14).

Also included within claim 6 is that *the difference Rc between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.*

Page 2 of the Office Action **readily admits** that Sasaki et al **do not mention** the specific dimensions in terms of the difference "Rc" between the maximum value and the minimum value.

But in the absence of any objective evidence, pages 2-3 of the Office Action assert that *it would have been an obvious matter of design choice, as determined through routine experimentation and optimization, to dimension the polyester film roll of Sasaki et al as specified in Claim 6, line 8 because one of ordinary skill would have been expected to have routinely experimented to determine the optimum dimensions for a particular use.*

In response, the suggestion that the design details were simply “a matter of design choice” evinces a misapprehension of the subject matter of design patents. *In re Dembiczak*, 50 USPQ2d 1614, 1620 (Fed. Cir. 1999). See, *Carman Industries, Inc. v. Wahl et al.*, 220 USPQ 481, 486 n. 13 (Fed. Cir. 1983)(“Utility patents afford protection for the mechanical structure and function of an invention whereas design patent protection concerns the ornamental or aesthetic features of a design.”).

Here, the present application is a utility model application filed under 35 U.S.C. §371, and is not a design application filed under 35 U.S.C. §171.

Page 3 of the Office Action assert that, *moreover, the same person of ordinary skill in the art would have appreciated the desirability of limiting the difference between the maximum diameter and the minimum diameter of the cylindrical object in order to provide uniformity to the cylindrical object.*

In response, the teachings, suggestions or incentives supporting the obviousness-type rejection must be clear and particular. Broad conclusory statements, standing alone, are not evidence. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Here, this assertion is merely a personal conclusion that is unsupported by any objective evidence.

Page 3 of the Office Action conclude that *therefore, because the polyester film roll of Sasaki has the same film length, width, thickness, and rolling hardness as the applicants' polyester film roll, and achieves the same result of a wrinkle free film, therefore it would have been obvious*

that Sasaki's working examples necessarily have maximum and minimum diameters sufficiently close to meet the relationship set forth in the claim and also be able to meet the difference R_c between that maximum value and the minimum value.

In response, the Office Action fails to highlight any disclosure within Sasaki or any other objective evidence for showing that "Sasaki has the same film length, width, thickness, and rolling hardness as the applicants' polyester film roll".

b. Claim 9 stands or falls alone

Claim 9 – Claim 9 is drawn to a polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the flexural modulus of the core in the circumferential direction is not less than 13 Gpa.

Sasaki - Within the Decision on Appeal of April 30, 2009, the Board of Patent Appeals and Interferences ("the Board") has **reversed** the rejection of claim 9 under 35 U.S.C. §103 as allegedly being unpatentable over Sasaki.

In this regard, the use of Sasaki as the lone reference in rejection under 35 U.S.C. §103 of claim 9 was already adjudicated and reversed by the Board (Decision on Appeal at page 14).

Page 3 of the Office Action readily admits that Sasaki et al do not mention the specific dimensions in terms of the flexural modulus of the core in the circumferential direction.

But in the absence of any objective evidence, page 3 of the Office Action assert that *it would have been an obvious matter of design choice, as determined through routine experimentation and optimization, to dimension the core of the polyester film roll of Sasaki et al as specified in Claim 9, lines 7-8 because one of ordinary skill would have been expected to have routinely experimented to determine the optimum dimensions for a particular use.*

In response, the suggestion that the design details were simply “a matter of design choice” evinces a misapprehension of the subject matter of design patents. *In re Dembiczak*, 50 USPQ2d 1614, 1620 (Fed. Cir. 1999). See, *Carman Industries, Inc. v. Wahl et al.*, 220 USPQ 481, 486 n. 13 (Fed. Cir. 1983)(“Utility patents afford protection for the mechanical structure and function of an invention whereas design patent protection concerns the ornamental or aesthetic features of a design.”).

Here, the present application is a utility model application filed under 35 U.S.C. §371, and is not a design application filed under 35 U.S.C. §171.

3. The Examiner erred in rejecting claims 13-15 and 23 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,576,344 (Sasaki) in view of U.S. Patent No. 4,911,951 (Ogawa).

a. Claim 13 stands or falls alone

Claim 13 – Claim 13 is drawn to a polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R

between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the polyester film is a film used for the support of a magnetic recording medium,

wherein the magnetic recording medium is a digital recording method magnetic recording medium.

Sasaki - Within the Decision on Appeal of April 30, 2009, the Board of Patent Appeals and Interferences (“the Board”) has **reversed** the rejection of claim 13 under 35 U.S.C. §103 as allegedly being unpatentable over Sasaki.

In this regard, the use of Sasaki as the lone reference in rejection under 35 U.S.C. §103 of claim 13 was already adjudicated and reversed by the Board (Decision on Appeal at page 14).

Moreover, Sasaki **fails** to disclose, teach, or suggest that the magnetic recording medium is a digital recording method magnetic recording medium.

Ogawa – The Office Action cites Ogawa for the features that are absent from within Sasaki.

However, Ogawa **fails** to disclose, teach, or suggest that the magnetic recording medium is a digital recording method magnetic recording medium.

Furthermore, Ogawa **fails** to remedy the deficiencies within Sasaki that have been identified by the Board within the Decision on Appeal.

Page 4 of the Office Action contends that *the use of magnetic recording medium for digital recording is notoriously old and well known.*

In response, there is no concession as to the veracity of Official Notice taken in the Office Action.

Instead, U.S. patent practice and procedures pursuant to 37 C.F.R. §1.104(d)(2) dictate the following:

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

An affidavit or document should be provided in support of the assertion that *the use of magnetic recording medium for digital recording is notoriously old and well known.* 37 C.F.R. §1.104(d)(2), M.P.E.P. §2144.03. See also, *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989)(failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error).

b. Claim 14 stands or falls alone

Claim 14 – Claim 14 is drawn to a polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the polyester film is a film used for the support of a magnetic recording medium,

wherein the magnetic recording medium is a magnetic recording medium whose magnetic layer is a ferromagnetic metal thin film layer.

Sasaki - Within the Decision on Appeal of April 30, 2009, the Board of Patent Appeals and Interferences (“the Board”) has **reversed** the rejection of claim 14 under 35 U.S.C. §103 as allegedly being unpatentable over Sasaki.

In this regard, the use of Sasaki as the lone reference in rejection under 35 U.S.C. §103 of claim 14 was already adjudicated and reversed by the Board (Decision on Appeal at page 14).

Moreover, Sasaki **fails** to disclose, teach, or suggest that the magnetic recording medium is a magnetic recording medium whose magnetic layer is a ferromagnetic metal thin film layer.

Ogawa – The Office Action cites Ogawa for the features that are absent from within Sasaki.

However, Ogawa **fails** to remedy the deficiencies within Sasaki that have been identified by the Board within the Decision on Appeal.

c. Claim 15 stands or falls alone

Claim 15 – Claim 15 is drawn to a polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the polyester film is a film used for the support of a magnetic recording medium,

wherein the polyester film has a coating layer on the side on which the magnetic surface is disposed and the surface with the coating layer is rolled in the inner side.

Sasaki – Page 4 of the Office Action **readily admits** that Sasaki does not teach the roll having a ferromagnetic layer and the coating layer being rolled in the inner side.

Thus, Sasaki fails to disclose, teach, or suggest polyester film roll wherein the polyester film has a coating layer on the side on which the magnetic surface is disposed and the surface with the coating layer is rolled in the inner side.

Ogawa – Page 4 of the Office Action contends that it would have further been obvious to one of ordinary skill in the art to wind the roll with the coating layer on the inside, as taught by Ogawa et al, for the purpose of protecting the layer from foreign substances.

The extended support 1 which has been wound up in the form of a roll is fed at a fixed speed (100-600 m/min) from a feeding roll 2, and in the initial stage, the lower layer is coated form

a first coating head 3 and then the upper layer is coated by means of a second coating head 4, the coating being carried out continuously (Ogawa at column 4, lines 62-67).

The material thus coated and dried is then subjected immediately to a calendering treatment in the calendering means 7 and then dried completely at a temperature of from 50° to 150°C in the second drying means 8 and wound up by means of the winding up role 9 (Ogawa at column 5, lines 8-12).

However, reviewing the orientation of the calendering means 7 and the winding up role 9 within Figures 1 and 2 of Ogawa, Ogawa does not teach the roll having a ferromagnetic layer and the coating layer being rolled in the inner side.

Thus, Ogawa fails to disclose, teach, or suggest polyester film roll wherein the polyester film has a coating layer on the side on which the magnetic surface is disposed and the surface with the coating layer is rolled in the inner side.

Furthermore, Ogawa fails to remedy the deficiencies within Sasaki that have been identified by the Board within the Decision on Appeal.

d. Claim 23 stands or falls alone

Claim 23 – Claim 23 is drawn to a polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a plurality of diameters obtained from measurements along the width direction of the roll, said plurality of diameters being represented by a curved line having two ends, said plurality of diameters comprising a maximum diameter and a minimum diameter, said maximum diameter being represented by a first maximum perpendicular line length which is determined by a straight line drawn connecting both ends of the curved line, and a first perpendicular line with respect to said straight line drawn from the maximum convex area of said curved line to said straight line, said minimum diameter being represented by a second maximum perpendicular line length which is determined by a second perpendicular line with respect to said straight line drawn from the maximum concave area of said curved line to said straight line,

wherein the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm ,

wherein the polyester film roll is supplied for a magnetic recording medium,

wherein the polyester film roll is supplied for a magnetic recording medium whose magnetic layer is a coating type.

Sasaki – Sasaki **fails** to disclose, teach, or suggest a plurality of diameters being represented by a curved line having two ends.

Sasaki **fails** to disclose, teach, or suggest a first perpendicular line with respect to the straight line drawn from the maximum convex area of the curved line to the straight line.

Sasaki **fails** to disclose, teach, or suggest the minimum diameter being represented by a second maximum perpendicular line length which is determined by a second perpendicular line with respect to the straight line drawn from the maximum concave area of the curved line to the straight line.

Sasaki *fails* to disclose, teach, or suggest the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm .

Ogawa – Ogawa *fails* to disclose, teach, or suggest a plurality of diameters being represented by a curved line having two ends.

Ogawa *fails* to disclose, teach, or suggest a first perpendicular line with respect to the straight line drawn from the maximum convex area of the curved line to the straight line.

Ogawa *fails* to disclose, teach, or suggest the minimum diameter being represented by a second maximum perpendicular line length which is determined by a second perpendicular line with respect to the straight line drawn from the maximum concave area of the curved line to the straight line.

Ogawa *fails* to disclose, teach, or suggest the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm .

4. Evidence of nonobviousness

Generally, the discovery of an optimum value of a variable in a known process is normally obvious. *In re Aller*, 105 USPQ 233 (1955).

The mere determination of a suitable range of values for a suggested result-effective variable or agent is considered to be *prima facie* within the realm of ordinary skill. *Vanderkooi v. Hoeschele*, 7 USPQ2d 1253, 1255 (Bd. Pat. App. & Int. 1987).

Here, throughout the Office Action are assertions that it would have been an obvious matter of design choice, as determined through routine experimentation and optimization, to dimension the length of the lines of Sasaki because one of ordinary skill would have been expected to have routinely experimented to determine the optimum dimensions for a particular use.

In response, an exception to the “optimization” rule of *In re Aller* is where the parameter optimized was not recognized in the prior art as one that would affect the results. *Ex parte Whalen*, 89 USPQ2d 1078, 1083 (Bd. Pat. App. & Int. 2008).

Another exception to the “optimization” rule of *In re Aller* is in cases where the results of optimizing a variable, which was known to be result effective; were unexpectedly good. *In re Antonie*, 195 USPQ 6, 8-9 (CCPA 1977)(The decision of the board is *reversed*).

a. Result effective variables undisclosed in the art

The parameter optimized *being unrecognized in the art as a result-effective variable* is an exception to the “optimization” rule of *In re Aller*. *In re Antonie*, 195 USPQ 6, 8-9 (CCPA 1977).

The Decision on Appeal highlights that Sasaki *fails* to recognize any relationship between the diameter of the polyester film roll, the length of the rolled file, and the width of the film roll (Decision at page 8).

Additionally, within claims 6, 9 and 13-15, *the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$.*

The new ground of rejection of prior claims 1-5, 12, 16-22, and 24 made on pages 10-13 of the Decision of the Appeal dated April 30, 2009 may quite possibly refer to the roll of Sasaki being as “wrinkle free”.

The new ground of rejection may quite possibly refer to the roll of Sasaki as disclosing a length, a width and a thickness.

The new ground of rejection may quite possibly refer to the roll of Sasaki disclosing a rolling hardness.

The new ground of rejection may quite possibly refer to the roll of Sasaki disclosing a centerline surface average roughness.

The new ground of rejection may quite possibly refer to the roll of Sasaki as disclosing a surface roughness Ra.

However, there is *no disclosure* within Sasaki regarding the *diameter* of a polyester film roll.

Instead, the Decision on Appeal at page 11 attempts to conclude that the same person of ordinary skill in the art would have appreciated the desirability of limiting the difference between the maximum diameter value and the minimum diameter value.

In response, Sasaki does not suggest the desirability of *the difference R between the maximum diameter value and the minimum diameter value*, when there is no disclosure within Sasaki regarding the diameter of a polyester film roll.

Likewise, Sasaki fails to disclose *the difference R between the maximum diameter value and the minimum diameter value* or the manner in which it could be attained, when there is no disclosure within Sasaki regarding the diameter of a polyester film roll.

As a consequence, Sasaki fails to recognize *the difference R between the maximum diameter value and the minimum diameter value* as being a result-effective variable that, when optimized, would affect a quality of the polyester film roll. Especially when there is no disclosure within Sasaki regarding the diameter of a polyester film roll.

Broad conclusory statements, standing alone, are not evidence. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

The Patent Office may not, because *it may doubt* that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis. *In re Warner and Warner*, 154 USPQ 173, 178 (C.C.P.A. 1967).

In addition to the absence of any objective supporting evidence or disclosure within Sasaki, it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991).

To imbue one of ordinary skill in the art with knowledge of the invention [on appeal], when no prior art reference or references of record convey or suggest that knowledge, is to fall

victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303, 312-313 (Fed. Cir. 1983).

In the absence of any disclosure within Sasaki or any other objective supporting evidence, the line of reasoning within the Decision on Appeal appears to have been merely an extraction from the Appellant's own specification.

In this regard, Appellant's own specification notes in the paragraph beginning on page 2, line 12 that:

According to the present invention, the above-described purposes and advantages of the present invention are achieved, firstly, by a polyester film roll (hereinafter often referred to as the first polyester film roll) in which a polyester film is rolled on a core, characterized in that the difference R (m) between the maximum value and the minimum value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$, when the diameters of said roll are measured in the width direction of the roll. Therein, W is the width (m) of the film roll, and L is the rolled length (m) of the film roll.

Appellant's own specification notes in the paragraph beginning on page 3, line 33 that:

The polyester film roll in the present invention is the film roll which the polyester film is rolled on the core, and needs that the difference R (m) between the maximum value and the minimum value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$, when the diameters of said roll are measured in the width direction of the roll. Preferably, R (m) is preferably not more than $1.5W \times 10^{-3}$ and not more than $(L/1.5) \times 10^{-7}$. Therein, W is the width (m) of the film roll, and L is the rolled length (m) of the film roll.

As a consequence, the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$ was not

recognized within Sasaki as being a result-effective variable, but is merely an extraction from the Appellant's own specification.

Within claim 6, *the difference Rc between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.*

Here, page 2 of the Office Action **readily admits** that Sasaki et al **do not mention** the specific dimensions in terms of the difference "Rc" between the maximum value and the minimum value.

Instead, Appellant's own specification notes in the paragraph beginning on page 5, line 30 that:

The outer diameter of the roll-shaped core of the polyester film roll in the present invention is especially not limited, but is usually 0.100 to 0.400 m. When the outer diameters of the roll shape of the core are measured in the width direction of the core, **the difference (Rc) between the maximum value and the minimum value is preferably not more than 300×10^{-6} m**, further preferably 200×10^{-6} m. When the difference (Rc) exceeds 300×10^{-6} m, the core is not preferable, because wrinkles and slacks are generated in the film roll by the effect of the core, even when the thickness unevenness of the polyester film is small. The roll shape of the core is desirably a crown shape in which the central portion of the core in the width direction and both the end portions of the core are thick and thin, respectively. The crown shape facilitates the outward removal of air between the films and the inhibition of wrinkle generation, when the polyester film is rolled. In the core of the crown shape, the difference between the diameter of the central portion and the diameters of both the end portions is preferably in the range of 0 m to 300×10^{-6} m.

As a consequence, the specific dimensions in terms of the difference "Rc" between the maximum value and the minimum value was not recognized within Sasaki as being a result-effective variable, but is merely an extraction from the Appellant's own specification.

Likewise, the difference Rc between the maximum value and the minimum value is not more than 300×10^6 m, when the roll diameters of the core are measured along the width direction of the core was not recognized within Sasaki as being a result-effective variable, but is merely an extraction from the Appellant's own specification.

Within claim 9, the flexural modulus of the core in the circumferential direction is not less than 13 Gpa.

Here, page 3 of the Office Action readily admits that Sasaki does not mention the specific dimensions in terms of the flexural modulus of the core in the circumferential direction.

Instead, Appellant's own specification notes in the paragraph beginning on page 6, line 19 that:

The flexural modulus of the above-described core in the circumferential direction is preferably not less than 13 GPa, further preferably not less than 14 GPa. When the core having the flexural modulus not satisfying the range is used, the core is often deformed by a tension and a contact pressure generated when the polyester film is rolled. A method for adjusting the strength of the core within the range is especially not limited, but the strength of, for example, a carbon fiber-reinforced plastic core can be adjusted by suitably selecting the amount of the carbon fibers, and a desired strength is further obtained by adjusting the thickness of the core.

As a consequence, the flexural modulus of the core in the circumferential direction is not less than 13 Gpa was not recognized within Sasaki as being a result-effective variable, but is merely an extraction from the Appellant's own specification.

Within claim 23, *the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm .*

Page 5 of the Office Action readily admits that Sasaki et al do not mention the specific dimensions of the length of the lines.

Instead, Appellant's own specification notes in the paragraph beginning on page 6, line 19 that:

According to the present invention, the above-described purposes and advantages of the present invention are achieved, secondly, by a polyester film roll (hereinafter often referred to as the second polyester film roll) in which a polyester film is rolled on a core, characterized in that, among the lengths of lines which are obtained by measuring the diameters of said roll in the width direction of the roll, drawing a straight line between both the ends of the curved line of the obtained roll diameters, and then vertically drawing the lines from said curved line to said straight line, the maximum length (maximum convex portion) on the convex portion side from said straight line is not more than 500 μm , and the maximum length (maximum concave portion) on the concave portion side from said straight line is not more than 300 μm .

Appellant's own specification notes in the paragraph beginning on page 8, line 9 that:

The polyester film roll in the present invention is a polyester film roll in which a polyester film is rolled on a core, and which, among the lengths of lines which are obtained by measuring the diameters of said roll in the width direction of the roll, drawing a straight line between both the ends of the curved line of the obtained roll diameters, and then vertically drawing the lines from said curved line to said straight line, the maximum length (maximum convex portion) on the convex portion side from said straight line is not more than 500 μm , preferably not more than 400 μm ,

especially preferably not more than 300 μ m, and the maximum length (maximum concave portion) on the concave portion side from said straight line is not more than 300 μ m, preferably not more than 200 μ m, especially preferably not more than 150 μ m.

As a consequence, the first maximum perpendicular line length is not more than 500 μ m, and the second maximum perpendicular line length is not more than 300 μ m was not recognized within Sasaki as being a result-effective variable, but is merely an extraction from the Appellant's own specification.

Ogawa fails to account for the claimed features that are absent from within Sasaki.

As a consequence, any such optimization would not have come from within the teachings of Sasaki and Ogawa, either individually or as a whole.

b. Unexpectedly good results

As detailed hereinabove, the Office Action fails to highlight a disclosure within Sasaki and Ogawa, either individually or as a whole, for showing any feature within the claims on appeal that would have been recognized in the art as a result-effective variable.

But even if a sufficient disclosure is present within Sasaki and Ogawa, either individually or as a whole, the results of a known parameter when optimized being unexpectedly good is another exception to the “optimization” rule of *In re Aller*. *In re Antonie*, 195 USPQ 6, 8-9 (CCPA 1977).

One way for a patent applicant to rebut a *prima facie* case of obviousness is to make a showing of “unexpected results,” i.e., to show that the claimed invention exhibits some superior property or advantage that a person of ordinary skill in the relevant art would have found surprising or unexpected. *In re Geisler*, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997).

All evidence of nonobviousness must be considered when assessing patentability. *Richardson-Vicks Inc. v. The Upjohn Co.*, 44 USPQ2d 1181, 1186 (Fed. Cir. 1997).

As shown hereinabove, is respectfully submitted that the Office Action had not made a *prima facie* case of obviousness respecting the claims, and that evidence of comparative testing is unnecessary in rebuttal. *In re Clemens, Hurwitz, and Walker*, 206 USPQ 289, 296 (C.C.P.A. 1980).

Nevertheless, consistent with the rule that all evidence of nonobviousness must be considered when assessing patentability, the U.S. Patent and Trademark Office must consider comparative data in the specification in determining whether the claimed invention provides unexpected results. *In re Soni*, 34 USPQ2d 1684, 1687 (Fed. Cir. 1995). See also, *In re Wright*, 6 USPQ2d 1959, 1962 (Fed. Cir. 1988).

Here, within claims 6, 9 and 13-15, *the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$.*

Within claim 6, *the difference R_c between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.*

Within claim 9, *the flexural modulus of the core in the circumferential direction is not less than 13 Gpa.*

Within claim 23, *the first maximum perpendicular line length is not more than 500 μ m, and the second maximum perpendicular line length is not more than 300 μ m.*

Here, Table 1 of the specification for the instant application is reproduced hereinbelow.

TABLE 1

	Roll					The Rolled Appearance of the Roll	
	W [m]	L [m]	$2W \times 10^{-3}$ [10^{-6} m]	$L \times 10^{-7}$ [10^{-6} m]	R [10^{-6} m]	Just after Slit	At the Passage of 24 hours after Slit
Example 1	0.500	9,000	1,000	900	300	Very good	Very good
Example 2	0.620	7,000	1,240	700	220	Very good	Very good
Example 3	0.500	9,000	1,000	900	250	Very good	Very good
Example 4	0.500	9,000	1,000	900	350	Very good	Very good
Comparative Example 1	0.500	9,000	1,000	900	1,200	Bad	Bad
Comparative Example 2	0.620	7,000	1,240	700	810	Bad	Bad
Comparative Example 3	0.500	7,000	1,000	700	950	Bad	Bad
Comparative Example 4	0.500	9,000	1,000	900	1,030	Good	Bad

As apparent from Table 1, the polyester film roll of the present invention did not have wrinkles generated thereon, and had a good rolled appearance.

Table 2 of the specification for the instant application is reproduced hereinbelow.

TABLE 2

Unit		E. 5	E. 6	E. 7	E. 8	C.E. 5	C.E. 6	C.E. 7
Polymer Layer Constitution		PEN Single Layer	PEN Single Layer	PEN Single Layer	PET Two Layers	PEN Single Layer	PEN Single Layer	PEN Single Layer
Surface Roughness								
Layer A	[nm]	7	7	7	4	7	7	7
Layer B	[nm]	7	7	7	9	7	7	7
Total Ratio								
# 1	[Ratio]	4.7	4.7	4.7	5.75	4.7	4.7	4.7
# 2	[Ratio]	5.0	5.0	5.0	3.6	5.0	5.0	5.0
# 3	[nm]	30	30	30	30	60	60	60
# 4	[nm]	100	150	150	108	100	150	100
Roll Size								
Film Width	[mm]	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Film Length	[m]	5,000	5,000	5,000	5,000	5,000	5,000	5,000

TABLE 2-continued

	Unit	E. 5	E. 6	E. 7	E. 8	C.E. 5	C.E. 6	C.E. 7
Roll Shape								
# 5	[μ m]	450	250	200	150	700	550	300
# 6	[μ m]	250	150	100	100	400	250	350
Rolled Appearance of the Film Roll								
#7		Good	Very Good	Very Good	Very Good	Bad	Bad	Good
#8		Good	Very Good	Very Good	Very Good	Bad	Good	Bad

E.: Example

C.E.: Comparative Example

1: Ratio in the Machine Direction

2: Ratio in the Transverse Direction

3: Die Lip Heater Distance

4: Oscillation Width

5: Maximum Convex Portion

6: Maximum Concave Portion

7: Longitudinal Wrinkles

8: Slackened Wrinkles

As apparent from the table 2, the polyester film roll of the present invention was free from the generation of wrinkles, had a good rolled appearance, and did not cause a trouble in practical use.

The instant application clearly meet the standards for patentability, since the essential unpredictability of the most important properties negates the claim of obviousness. *Warner-Jenkinson Company et al. v. Allied Chemical Corporation et al.*, 206 USPQ 837, 855 (S.D.N.Y. 1979).

An applicant relying on comparative tests to rebut a prima facie case of obviousness must compare his claimed invention to the closest prior art." *In re De Blauwe*, 222 USPQ 191, 196 (Fed. Cir. 1984).

The Office Action apparently offers Sasaki as the closet prior art.

Four different types of polyethylene terephthalate films, each having a thickness of 10 microns and the centerline average surface roughness (Ra) indicated in Table 1, were produced by means of a biaxial drawing process by using mixtures of polyethylene terephthalate and surface roughening materials, for example, kaoline, calcium carbide and silica powders, which differ from each other in particle size or amount thereof (Sasaki at column 6, lines 65-68).

Table 1 of Sasaki is reproduced hereinbelow.

TABLE 1

Centerline average surface roughness Ra (μ)	Minimum Hardness H
0.05	<88
0.03	<92
0.01	<95
0.001	<97

Table 1 of Sasaki shows the relationship between the centerline average surface roughness (Ra) of the film and the minimum roll hardness (H) of the film roll, at which hardness no wrinkles were formed in the film roll (Sasaki at column 7, lines 9-13).

Table 2 of Sasaki shows that when the centerline average surface roughness of the film is small, the hardness of the peripheral surface layer in the touch roll should be small (Sasaki at column 8, lines 29-33).

Table 2 of Sasaki is reproduced hereinbelow.

TABLE 2

Centerline average surface roughness (Ra) of the film (microns)	Maximum hardness of the touch roll surface for preventing formation of pimples
0.05	100 degrees
0.03	90 degrees
0.02	80 degrees
0.01	65 degrees
0.001	35 degrees

As an initial matter, Table 1 and 2 of Sasaki, taken as a whole, support appellant's position that the parameters that are present within the claimed invention of the instant application were not recognized to be a result-effective variable. *In re Yates*, 211 USPQ 1149, 1151 (C.C.P.A. 1981).

Furthermore, Table 1 and 2 of Sasaki fail to demonstrate that *the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$* .

Table 1 and 2 of Sasaki fail to demonstrate that, *the difference Rc between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core*.

Table 1 and 2 of Sasaki fail to demonstrate that *the flexural modulus of the core in the circumferential direction is not less than 13 Gpa*.

Table 1 and 2 of Sasaki fail to demonstrate that *the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm .*

5. Conclusion

The claims are considered allowable for the same reasons discussed above, as well as for the additional features they recite.

Reversal of the Examiner's decision is respectfully requested.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Dated: November 18, 2009

Respectfully submitted,

By 

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Registration No.: 47,255

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Attorney for Applicant

CLAIMS APPENDIX

1-5. (Canceled)

6. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the difference R_c between the maximum value and the minimum value is not more than 300×10^{-6} m, when the roll diameters of the core are measured along the width direction of the core.

7-8. (Canceled)

9. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the flexural modulus of the core in the circumferential direction is not less than 13 Gpa.

10-12. (Canceled)

13. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the polyester film is a film used for the support of a magnetic recording medium,

wherein the magnetic recording medium is a digital recording method magnetic recording medium.

14. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the polyester film is a film used for the support of a magnetic recording medium,

wherein the magnetic recording medium is a magnetic recording medium whose magnetic layer is a ferromagnetic metal thin film layer.

15. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a maximum diameter and a minimum diameter when all diameters of said roll are measured along the width direction of the roll, and the difference R between the maximum diameter value and the minimum diameter value is not more than $2W \times 10^{-3}$ and not more than $L \times 10^{-7}$,

wherein W is the width of the film roll, and L is the length of the rolled film,

wherein the polyester film is a film used for the support of a magnetic recording medium,

wherein the polyester film has a coating layer on the side on which the magnetic surface is disposed and the surface with the coating layer is rolled in the inner side.

16-22. (Canceled)

23. A polyester film roll in which a polyester film is rolled on a core, said polyester film roll having a plurality of diameters obtained from measurements along the width direction of the

roll, said plurality of diameters being represented by a curved line having two ends, said plurality of diameters comprising a maximum diameter and a minimum diameter, said maximum diameter being represented by a first maximum perpendicular line length which is determined by a straight line drawn connecting both ends of the curved line, and a first perpendicular line with respect to said straight line drawn from the maximum convex area of said curved line to said straight line, said minimum diameter being represented by a second maximum perpendicular line length which is determined by a second perpendicular line with respect to said straight line drawn from the maximum concave area of said curved line to said straight line,

wherein the first maximum perpendicular line length is not more than 500 μm , and the second maximum perpendicular line length is not more than 300 μm ,

wherein the polyester film roll is supplied for a magnetic recording medium,

wherein the polyester film roll is supplied for a magnetic recording medium whose magnetic layer is a coating type.

24. (Canceled)

EVIDENCE APPENDIX

There is no other evidence which will directly affect or have a bearing on the Board's decision in this appeal.

RELATED PROCEEDINGS APPENDIX

A Decision of the Board of Patent Appeals and Interferences was mailed on April 30, 2009. The Decision of April 30, 2009 reversed the final rejection of the examiner as to all of the pending claims within the instant application.

A Petition Under 37 C.F.R. §1.181 has been filed in the instant application along with this Appeal Brief.

A Decision of the Board of Patent Appeals and Interferences was mailed on May 7, 2009 in U.S. Patent Application No. 10/832,279. U.S. Patent Application No. 10/832,279 is a continuation of the instant application. The Decision of May 7, 2009 reversed the final rejection of the examiner as to all of the pending claims within the continuation application.

There are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.